

CENTRAL VERMONT REGIONAL PLANNING COMMISSION



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FCC MAIL ROOM

October 27, 1997

Mr. William Caton, Acting Secretary
Federal Communications Commission
1919 M Street NW
Washington D.C. 20554

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OCT 30 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: MM Docket No. 97-182

Dear Mr. Caton:

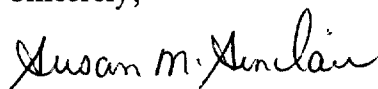
The Central Vermont Regional Planning Commission (CVRPC) is opposed to the above referenced proposed rule to preempt certain state and local land use ordinances as it relates to local digital television (DTV) service and wireless telecommunications facilities.

Vermont has a long-standing tradition of municipal control of land uses within their jurisdictions. While there are benefits of wireless communication technologies, the proliferation of wireless telecommunications towers on our hillsides has had negative effects and is a major concern of our citizens. CVRPC believes that municipal zoning officials need to retain the ability to consider appropriate locations for new facilities, access roads to remote sites, use of herbicides in the area, and the potential for communications interference and transmitted radiation.

In addition, we encourage the FCC to adopt a policy regarding the shared use of existing facilities. The duly adopted Central Vermont Regional Plan calls for use of existing facilities where possible rather than development of new transmission and receiving stations.

CVRPC is an organization of twenty-three municipalities in Central Vermont and is opposed to a rule that would preempt any duly adopted regional plan, municipal plan, and/or local zoning ordinance.

Sincerely,


Susan M. Sinclair
Executive Director

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October 27, 1997

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GREATER ORLANDO AVIATION AUTHORITY

OCT 30 1997

Orlando International Airport
One Airport Boulevard
Orlando, Florida 32827-4399
(407) 825-2001

Mr. William F. Caton
Acting Secretary
Office of the Secretary
Federal Communication Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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OCT 30 1997

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Re: Notice of Proposed Rule Making No. 97-182

Dear Secretary Caton:

The Greater Orlando Aviation Authority strongly objects to any preemption that would restrict the authority of the state and local governments from regulating the siting and construction of any structure including DTV towers.

The City of Orlando and the Greater Orlando Aviation Authority, as well as, any city and/or airport that receive federal funds is required by federal law to sign certain "grant assurances". One of these assurances requires the City and the Airport to protect the navigable airspace surrounding the airports that are under their control. Requiring the City to protect the airspace surrounding their airports and then preempting local zoning regulations is like giving someone a job and then taking away their tools. If these regulation are preempted how does the City of Orlando and the Aviation Authority meet their obligations to the federal government and to the citizens of Orange County Florida?

Your response might suggest that the FAA would conduct an aeronautical study and issue a "Determination of Hazard" or "Determination of No Hazard". However, for the FAA to issue a "Determination of Hazard" **substantial adverse effect** on aviation must be proven. If there is moderate adverse effect on aviation the FAA would issue a "Determination of No Hazard" and even though this structure is now classified as an obstruction to aviation by the FAA, the FCC will issue a license to operate. We at the local level need some method to protect our airports from this moderate adverse effects to aviation. Presently, our local zoning regulations require that any proposed structure that is classified to be an obstruction by the FAA would require a variance from the Airport Zoning Board of Adjustment.

Preemption of local zoning regulation may indeed save some time for the proponents of these antenna towers, however, the time saved would be minor compared to the possible effects to the National Airspace System.

Sincerely,

Vern Munroe
Mgr. Aviation Technical Services

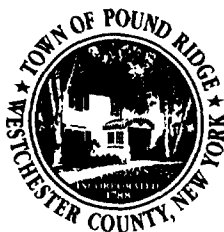
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Town of Pound Ridge

OCT 30 1997

TEL: 914 262-1100



October 28, 1997

Office of the Secretary
Federal Communications Commission
Wireless Communications Bureau
1919 M Street, N.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Reference: MM
Docket : 97-182

Dear Secretary:

It has been brought to my attention that the Federal Communications Commission is proposing amending the Telecommunications Act of 1996 by over-riding State and Local jurisdictions.

The Bureau informed the public about the provisions of Section 704 in its issuance of a Fact Sheet back in September 1996 to assist State and Local governments to deal with the complex issues of personal wireless facilities siting.

The Town of Pound Ridge has been working diligently with wireless providers since the enactment of "The Act" to accommodate wireless antennas while preserving the aesthetics of our beautiful town.

As Town Supervisor and a strong advocate of Home Rule, I personally resent the intrusion of the Federal Government going beyond the original enactment.

Perhaps this was brought about as a consequence of many municipalities resisting the pressures put upon them by the providers. Whatever the reason, I would like the opportunity to participate in the reply period and request that I be kept informed about this.

Very truly yours,


Lucille D. Corda
SUPERVISOR

LDC/eo

cc: Hon. Senator Daniel P. Moynihan
Hon. Senator Alphonse M. D'Amato
Hon. Representative Sue W. Kelly

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October 27, 1997

Office of the Secretary
Federal Communications Commission
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

FED. MAIL ROOM

RE: Request for Comments
47CFR Part 1

FCC 1997

Dear Sir/Madame:

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We are writing in opposition to the proposed rule making entitled Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Transmission Facilities. This proposed FCC rule will limit or even negate any authority that the Federal Aviation Administration (FAA), Indiana Department of Transportation-Aeronautics Section, and our local zoning boards will have over transmission towers. It is critical to the safety of our airport facility that there be a "checks and balances" to assure that no new obstructions to our airports are developed. By accelerating the review process, unsafe decisions could be made by the FCC, which would mean a loss of utility at our airport!

As the operator of an airport, we are very concerned that this proposed rule will severely limit our ability and the powers of the agencies that we work with to protect our airport from the encroachment of tall towers.

We oppose the proposed rule as it is now written. Recognizing that new technology is requiring the installation of new transmission facilities, we encourage you to find ways to allow the installation of these towers in harmony with the airport facilities that are also critical to our nation's economic health. Giving the FCC preemptive power over state and local zoning would place the interests of DTV implementation ahead of the interests of existing aviation facilities.

Thank you for considering these views as you evaluate this proposed rule.

Sincerely,

Thomas C. Cox

Thomas C. Cox, Sec., Virgil Grissom Airport Board of Aviation
Bedford, IN 47421

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Federal Communications Commission
FCC Dockets Branch
Room 239
Docket No. 97-296
1919 M Street, NW
Washington, DC 20554

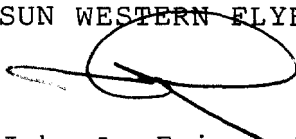
Gentlemen:

Subject: Notice of Proposed Rulemaking, Digital Television
Towers

Our primary business is the transfer of critically ill patients via air to a higher level of care. In general, we are flying into small towns, often at night and for the first time. To service these outlying hospitals means servicing these small communities 24 hours per day. Nearly half our 5000+ legs per year are flown at night and many are in marginal weather without benefit of control tower approaches. Should these DTV towers be constructed without benefit of normal airfield constraints related to elevation of obstructions and runway slope restrictions, we believe they would present an additional safety of flight hazard.

Yours truly,

SUN WESTERN FLYERS, INC.


John L. Ewing, Jr.
President

k

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c: Alan N. Darrow, Vice President
National Air Transportation Association

PLAIN TOWNSHIP TRUSTEES

2600 EASTON STREET, N.E., NORTH CANTON, OHIO 44721-2655

TRUSTEES

Louis P. Giavasis
966-4936

Albert P. Leno, II
493-6228

Claude W. Shriver, II
493-6556

CLERK-TREASURER

John B. Baker, Jr.
455-7519

DEPARTMENT TELEPHONES

Administration/TDD (330) 492-4689
Clerk (330) 493-1000
Fire Dept. (330) 492-4089
Road Dept (330) 492-3423
Zoning Dept (330) 492-4686
Fax (330) 492-5136

TOWNSHIP ADMINISTRATOR

Vincent A. Marion

LAW DIRECTOR

Richard R. Kuhn

FIRE CHIEF

John A. Sabo

PERINTENDENT

John E. Clark

ZONING DIRECTOR

Nicholas R. Campanelli

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October 27, 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Office of Secretary
Federal Communications Commission
Washington, DC 20554

RE: In the Matter of Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement, and Construction of Broadcast Station Transmission Facilities MM Docket #97-182.

Dear Sirs:

The above referenced matter was just called to my attention last week and given the impending comment date to the proposal, the officials of Plain Township, Stark County, Ohio, desire to make these brief responses to the proposed rule.

Plain Township, Stark County, Ohio, has approximately 35,000 residents with the appropriate residential, business, commercial and industrial areas zoned. Any unreasonable preemption of the zoning regulation currently in place will adversely affect the residents of this township. To that end the following remarks are set forth:

Any preemption should be limited to the broadcast facilities of digital television service only and not expanded to any other radio, television, or communication facilities. Given that, the definitions contained in the proposal should be modified accordingly.

The definition of a reasonable period of time contained under citing procedures in the proposal is not reasonable nor is it appropriate or necessary. It is also not feasible to suggest that a written opinion of a decision should be mandated within 5 days of any ruling.

It is Plain Township's position that alternative dispute resolution is to be encouraged in all matters. However, such methods should be done at the local level and should not be exercised to the exclusion of the local legal system.

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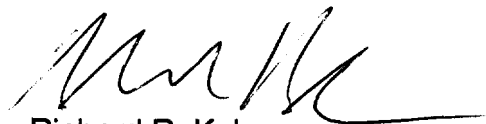
Any declaratory relief should be granted through the local legal system and not by the Commission in Washington, D.C. RECEIVED

The limitation as to grounds for objecting are far too narrow. Obviously there are criteria that should reasonably be considered over and above those listed in the proposed rule. OCT 30 1997 560 MAIL ROOM

It has been the Plain Township officials' experience that public input and discussion is mandatory for the expeditious and appropriate location of a telecommunications tower. When open discussion occurs between the provider, township officials, and those neighboring residents who are affected by the placement of a telecommunication tower, the interplay between the parties encourages solutions that are satisfactory to all. The proposed preemption rule will, if anything, discourage this interplay and discussion between the parties. It will adversely affect the citizens of Plain Township as they will be denied input into the decision making process of locating a particular tower. The citizens may be subjected to adverse financial and aesthetic consequences, among other consequences, if this proposed rule is adopted.

The officials of Plain Township appreciate the ability to make this formal comment to the proposed preemption rule contained in the above proceeding. We would appreciate being kept informed as this matter progresses.

Sincerely,



Richard R. Kuhn
Law Director

RRK:lds



BERKELEY COUNTY
SUPERVISOR'S OFFICE

JAMES H. ROZIER, JR.
Supervisor

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

October 28, 1997

Office of The Secretary
Federal Communication Commission
1919 Main Street, NW
Washington, DC 20554

RE: Comments on FCC Rule Making (Docket No. 97-182) Preempting Local
Government Authority In Zoning and Land Use Laws

Dear Sir:

I am very concerned with the effect that the above action will have on local government authority in enforcing local zoning and land use laws. This particular rule would seriously preempt any local regulation regardless of its necessity to the particular community. Time limits for granting building and zoning requests, which are delineated within this proposed rule, are unrealistic. Automatic approval, should these time limits not be met for any reason, is an irrational mandate for actions which may be entirely prudent. This rule would allow federal intrusion into essentially local concerns.

I understand that even permit requirements for all building and local zoning requests will be preempted unless those local governments prove the requirements are reasonable in order to meet health or safety concerns. The test for what is "reasonable" in this context is not defined. I believe that the word "reasonable" is a relative term with various meanings based on the circumstances of a given fact situation. This issue should be decided by local appeals boards who are directly involved with the enforcement of and granting of variances from the particular ordinance in question. If additional adjudication is needed, any further appeals through the state and federal court would be available. This process will allow the consistent operation of a locally adopted ordinance. Allowing any broadcaster who is unhappy with the local zoning decision to appeal directly to the FCC does not create an impartial forum where both sides can equally be represented and heard.

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FEDERAL COMMUNICATIONS COMMISSION
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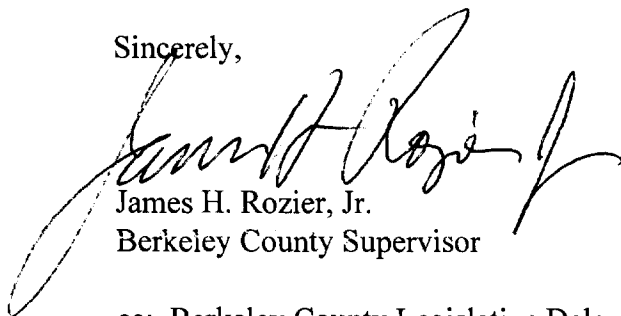
Office of The Secretary
Page 2
October 28, 1997

While I realize that the purpose of the rule is to allow for expedient and efficient construction and placement of broadcast towers with their related broadcast transmission facilities, I strongly oppose any effort which will circumvent local governments' ability to protect its citizens. Counties in South Carolina are charged with the responsibility of adopting community rules that protect public safety and property values. This responsibility is neither a charge nor a concern of the FCC. If local standards are circumvented by this rule, the community could suffer and a bad precedent would be established.

I strongly and emphatically object to this proposed rule. This is clearly a violation of the 10th Amendment of the U. S. Constitution.

Thank you for your attention to this matter. If I may be of further assistance in resolving this issue, please feel free to contact me.

Sincerely,



James H. Rozier, Jr.
Berkeley County Supervisor

cc: Berkeley County Legislative Delegation
Berkeley County Council Members

Addison County Regional Planning Commission

79 Court Street Middlebury, VT 05753

Telephone: 802-388-3141

Fax: 802-388-1888

October 23, 1997

FCC MAIL ROOM

97-182

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Office of the Secretary
Federal Communications Commission
Washington DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Members of the Commission:

The delegates to the Addison County Regional Planning Commission, representing 21 member municipalities in Addison County, Vermont, voted on October 8, 1997 to oppose further preemption of the role of state and local government in the permitting of broadcast transmission facilities. (Docket FCC 97-296)

We are particularly opposed to the total preemption contained under , Section (b)(2) of the proposed rule. This section places the burden of proof to demonstrate "reasonableness" of local and state ordinances totally upon the municipality or on state government.

The intent is clearly to nullify existing ordinances and prevent adoption of new ordinances by requiring an extensive justification process far beyond the capabilities of most small, rural municipalities. The justification is presumably open to appeal, although the proposed rule does not make this at all clear. This adds additional costs to municipal ordinance adoption.

The proposed rules also seem to preclude denying any permit for a tower based on scenic, economic or environmental considerations, or any factor other than health or safety. Since towers can have a significant impact on rural communities, and since the roll-out schedule is much more forgiving in rural areas, we believe such a total preemption is unwise and unwarranted.

If the intent of preemption is to provide DTV coverage quickly within the 30 major markets, preemption should apply to DTV facilities in those market areas only, not to the rural areas of the country, and not to other telecommunication facilities.

The proposed timelines, particularly in (a)(1), conflict with Vermont State requirements for public notice prior to public hearings. Vermont law requires 15 day notice, excluding day of notice and day of hearing. This is in addition to the lead-time required by newspapers to publish legal notice.

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Addison	Bridport	Bristol	Cornwall	Ferrisburgh	Goshen
Lincoln	Middlebury	Monkton	New Haven	Orwell	Panton
Ripton	Salisbury	Shoreham	Starksboro	Vergennes	Waltham
Weybridge	Whiting	Leicester			

Vermont law [24 VSA §4407(2,5), §4464, §4470] already contains time limits for hearings and issuance of permits. We believe that the constraints in Vermont address time constraints under the Telecommunications Act of 1996 in light of its emphasis on timeliness of service in the 30 major markets.

We are concerned about time limits (beyond those already in Vermont law) because in Vermont and other rural areas, planning and zoning boards are volunteer bodies, and they do not meet every week.

We applaud your proposed use of alternative dispute resolution. However, it is not clear where such a proceeding would occur. If the location is Washington, DC, this becomes a further negation of municipal rights to appear and present arguments due to the excessive costs involved. We suggest that such a procedure be held within the state and/or the municipality where the transmission facility is proposed. The proposed procedure also seems impossibly brief for careful and well-considered action.

We believe that a better approach would be to work with towns and regions to assemble regional telecommunications plans which would include a consensus on reasonable locations and reasonable permitting conditions which "reach a fair accommodation between federal and non-federal interests."

Thank you for your attention to this testimony.

Sincerely,



Thea D. Gaudette, Chair
Addison County Regional
Planning Commission

TDG/pkc

cc Senate Judiciary Committee
Senator Patrick Leahy
Senator James Jeffords
Representative Bernard Sanders



Loudoun County, Virginia

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Board of Supervisors

1 Harrison Street, 5th Floor, P.O. Box 7000, Leesburg, VA 20177-7000
703/777-0204 • Metro: 703/478-8415

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October 28, 1997

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
Washington D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Secretary Caton,

Loudoun County strongly opposes the preemption of State and local zoning and land use restrictions on the siting, placement, and construction of broadcast transmission facilities (i.e., radio and television broadcast towers, antennas, and associated buildings). The proposed preemption (FCC Docket # 97-182) undermines the rights of citizens to participate in the local planning process as well as a community's ability to provide for orderly development. The preemption will do little toward the stated goal of reducing the completion schedule of digital television (DTV) transmission facilities. In addition, there is no logic to including all television and radio towers in this rule if the goal is to allow for the rapid deployment of DTV facilities.

Loudoun County is proud of its rich natural and cultural heritage. The County's rolling hills, pastoral scenes, mountain views and historic settlements are an important aspect of the high quality of life in Loudoun and attract many residents and visitors to the County. In fact, tourism is one of the top contributors to Loudoun's economy. The County depends on land use planning and zoning to protect its natural and cultural heritage and maintain a healthy local economy. While the County recognizes the need for broadcast facilities, the County's Comprehensive Plan notes that additional communication towers on the mountains of western Loudoun and at other highly visible places is of particular concern (General Plan, text, p. 83). The FCC's proposed preemption would allow the broadcast industry to dictate the location of towers without concern for the County's planning and zoning efforts or consideration of the private property rights of our citizens.

The County's Zoning Ordinance permits broadcast transmission facilities in many zoning districts subject to a special exception. A special exception process involves two public hearings as well as a thorough evaluation of the proposal and is typically completed in 120 days. The process is essential to ensure evaluation of a proposal, public participation, a determination as to the compatibility of a proposed tower with the existing character of the neighborhood, and the establishment of appropriate conditions for mitigating the impacts of a proposed transmission broadcast facility.

Dale Polen Myers, Chairman

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Eleanore C. Towe
Blue Ridge District

Helen A. Marcum
Catocin District

Joan G. Rokus
Leesburg District

Scott K. York
Sterling District

David G. McWatters
Broad Run District

Lawrence S. Beerman, II
Dulles District

Jim Burton
Mercer District

Steve Whitener
Sugarland Run District

Mr. William F. Caton

October 28, 1997

Page 2

The proposed local zoning preemption would be in effect if any State or local government failed to act on an application for a broadcast transmission facility within 21 to 45 days. The 45 day process would prohibit the County from thoroughly evaluating an application and from following the public process that is required for special exceptions by State Law. The County strongly doubts that the possible savings of 45 - 75 days on a broadcast transmission facility application for the National Association of Broadcasters is worth sacrificing community participation and the ability of local governments to provide for orderly growth.

The County also objects to the need to prepare legally defensible documentation of a denial within five days of such action. This provision is inequitable considering that an applicant then will have 30 days to respond. The County also disagrees with the proposed provision to establish the FCC as the appeal agency rather than local courts. The local court is the proper body to rule on disputes arising between local governments and broadcasters.

Congress recognized the authority of local planning and zoning regulations over tower siting for telecommunications facilities in the Telecommunications Act of 1996. The FCC should not usurp such authority for broadcast transmission facilities by granting this request from the broadcast industry. Loudoun County urges the Commission to uphold local government zoning authority on broadcast transmission facilities.

Sincerely,

A handwritten signature in cursive script, reading "Dale Polen Myers".

Dale Polen Myers,
Chairman, Loudoun County Board of Supervisors

cc: Congressman Frank Wolf
Board of Supervisors
Terry Wharton, Dir. Building and Development
Julie Pastor, Dir. Planning



AMERICAN ASSOCIATION OF AIRPORT EXECUTIVES

4212 King St. ■ Alexandria, VA 22302 ■ 703/824/0500 ■ Fax 703/820/1395 ■ Internet Address <http://www.airportnet.org>

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South Bend, Indiana

HAROLD E. WIGHT
Concord, California

PRESIDENT

CHARLES M. BARCLAY
Alexandria, Virginia

October 30, 1997

The Federal Communications Commission
1919 M Street, NW
Room 239
Washington, DC 20554

Docket No. 97-182 & 97-296

Dear Gentlemen:

On behalf of the American Association of Airport Executives (AAAE) and its membership, I am contacting you in response to the Notice of Proposed Rule Making (NPRM), [FCC 97-296] seeking preemption of state and local zoning and land use restrictions on the siting, placement and construction of broadcast transmission facilities. AAAE urges the Commission to reconsider its proposal to preempt state and local zoning laws as a means of accelerating the installation of towers for digital television (DTV) purposes. In AAAE's opinion, the proposed rule fails to address the fundamental relationship between zoning restrictions for tower construction and the continued safe utilization of airspace near airports.

Any rule designed to accelerate the construction of broadcast towers must provide local and state authorities with the opportunity to remain involved in the site selection process. Moreover, in instances where the placement of transmission facilities have the potential to create an obstacle within the local airspace, state and local authorities must retain their present ability to regulate and even prohibit such construction. The proposed rule's "blanket" preemption, however, has the clear potential to diminish the roles played by state and local authorities to maintain control over actions that impact the local airspace such as tower construction.

The merits of DTV notwithstanding, AAAE's members have a responsibility to the federal government and its citizenry to ensure that airport operations continue to be conducted in a safe manner. In many cases, airport sponsors have little choice but to rely on local zoning laws as the only tool at their disposal to influence the placement of broadcast towers. For example, zoning restrictions remain a proven method of ensuring that adequate clearance is maintained between aircraft and objects on the ground near the airport. Additionally, just as local and state zoning boards abide by Federal Aviation Administration (FAA) regulations governing the height of buildings near airports, so too do local and state authorities take action to protect the airspace from intrusive towers.

Under 14 CFR Part 77, Subpart C, the FAA has established standards for determining what constitutes an obstruction to the navigable airspace. Part 77, however, does not provide authority for the FAA to remove such obstacles. Instead, Part 77 provides the agency with a framework under which it can determine what the minimum required airspace must be for the safe operation of aircraft. The proposed rule could allow broadcast towers to be placed so close to an airport that FAA would be forced under Part 77 to make changes to the airport's operational minimums.

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OFFICE OF THE SECRETARY

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Page Two
October 30, 1997

Given the projected increases in air traffic over the next 15 years, compounded by the inability of airports to secure adequate levels of funding for capital improvement projects, any action that may impede the full use of existing facilities is contrary to the best interests of the national airspace system.

AAAE is concerned that the FCC would be undermining what has become a successful relationship between state and local zoning entities and the FAA. Under 14 CFR Part 77, the FAA has been able to work in conjunction with airport sponsors, as well as local and state entities. All parties have managed to ensure that broadcast transmission towers are not located within airspace in such a way that they become obstacles and force the under utilization of airport facilities.

AAAE is also concerned that the scope of the proposed preemption authority may be applied too broadly. As written, the proposed rule could apply not only to the installation of DTV-related towers, but to the construction of all broadcast facilities, including relocation of existing towers. AAAE would suggest that the expeditious construction of DTV facilities may require a new rule, but that other facilities must continue to be constructed or relocated under existing regulations.

In the 1996 Telecommunications Act Congress indicated its desire to have a rapid conversion take place between existing broadcast transmission methods and new technologies. It seems incomprehensible, however, that lawmakers would have intended to have the construction of DTV facilities be used as an excuse to remove state and local zoning entities from the process entirely. From AAAE's perspective, such action would take place at the expense of aircraft navigation and useable airspace.

Finally, the proposed rule seeks to allow for 'de facto' FCC approval of the construction of DTV facilities if state and local authorities fail to approve requests for such construction within certain time periods, dependent on the type of construction permit. Such a blanket approval process disregards the particular issues that may be unique to each tower construction project. In many instances, only a thorough examination by local and/or state zoning officials have effectively highlighted any problems that may exist relating to the site of a proposed tower.

Again, I would request on behalf of AAAE's membership that the FCC reconsider its proposed rule. In the interests of a rapid deployment of DTV transmission facilities, it seems unnecessary to completely remove state and local interests from a process that has successfully served to enhance aviation safety.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Tebo', with a large, stylized flourish at the end.

CHRISTOPHER J. TEBO
Director, Regulatory Affairs



NATIONAL AIR
TRANSPORTATION
ASSOCIATION

DOCKET FILE COPY ORIGINAL 4226 King Street
Alexandria, Virginia 22302
(703) 845-9000 FAX (703) 845-8176

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October 30, 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

97-182

**FCC DOCKET NO. 97-296: PREEMPTION OF STATE AND LOCAL ZONING AND LAND
USE RESTRICTIONS ON THE SITING, PLACEMENT AND CONSTRUCTION OF BROADCAST
TRANSMISSION FACILITIES**

The National Air Transportation Association (NATA) represents aviation businesses nationwide that provide a variety of services at our nation's airports such as on-demand air charter, aircraft rental, fueling and maintenance, flight instruction and airline support services. NATA wishes to address serious aviation concerns raised by the evaluation of this Notice of Proposed Rulemaking (NPRM) that will give the FCC the authority to preempt state and local zoning laws. NATA strongly recommends the FCC withdraw this NPRM based upon the negative ramifications of the proposal on the safety of the traveling public and concerns with the necessity of the proposal.

NATA CONCERNS WITH NPRM

First and foremost, NATA is alarmed that there is no recognition of the impact to aviation in the NPRM which brings to the forefront the FCC's lack of aviation knowledge necessary when dealing with facilities that will impact air navigation. However, in addition to the concerns previously addressed, the Association is concerned with several other issues identified in the NPRM.

Most importantly, the proposal fails to provide any factual basis that state and local governments are an impediment, as the petitioners claim. No objective justification is provided for a proposal that will fundamentally alter a system that has worked for decades.

The NPRM outlines 21-, 30-, and 45-day trigger times for FCC intervention that are unexplained. There is no supporting evidence offered for what could simply be arbitrary times arrived at solely to benefit the interest of the petitioners. NATA contends that these relatively short times may prove unworkable for such a potentially controversial issue within any community, not to mention the top 30 markets mentioned in the NPRM. These are highly populated areas where the citizens are often rightly concerned with the impact such facilities will have on their community. Additionally, the zoning boards in these areas likely have numerous construction applications to process. It is completely unreasonable for the petitioners to state that because citizens and zoning boards are interested in a proposal, and wish to have time to consider its full impact, that the boards are an impediment. This is simply due process for all involved and impacted.

Additionally, the NPRM implies that this proposed FCC authority could extend to the construction of all broadcast facilities and yet again offers no information to justify the necessity for such action.

Finally, this rulemaking will make the FCC the "national zoning board of appeals." This is a dangerous precedent for a federal agency. The court with proper jurisdiction, not the FCC or any other federal agency, should adjudicate an appeal against an adverse decision. The decision to uphold or reverse a zoning denial should lie with an unbiased entity. In the circumstances addressed in the NPRM, the FCC is not an unbiased party because it is the Commission that has created the timeline that the petitioners must follow.

QUESTIONS OVER AIRSPACE CONTROL

The Federal Aviation Administration (FAA) is the federal agency charged with ensuring safe and accessible air transportation in the United States. However, the FAA has no authority to prohibit the construction of structures even if those structures pose a threat to the continued safety of the traveling public. Federal Aviation Regulations require only FAA notification and completion of an Obstacle Evaluation (OE) for any proposed construction exceeding certain trigger heights above ground. It is important to recognize that regardless of the FAA's determination of hazard or no-hazard in the OE, the structure can still be built. This unique situation exists because the FAA can exercise no authority over the use of land even if a structure intrudes upon navigable airspace. It is in this area, that the continued safety of aircraft and the accessibility of an airport to aircraft can become wholly dependent upon state and local zoning ordinances. In fact, many municipalities enact zoning ordinances to prohibit exactly the type of construction at or near airports as is addressed in this NPRM. Therefore, in evaluating the merits of this proposal against its impact on aviation, two distinct areas must be considered: 1) the collision hazards created; and 2) the continued accessibility of airports.

The FAA has the important responsibility of regulating and controlling airspace. The FAA's work with municipalities to develop strong, sensible land use restrictions to protect aircraft is a critical element to continued safety.

COLLISION HAZARDS

By granting the FCC the authority to preempt local zoning ordinances and allow expedited construction of digital television (DTV) towers, that will penetrate navigable airspace, the Commission will become responsible for an area in which it lacks the expertise to make knowledgeable determinations. In essence, the FCC will be in the position of evaluating the impact of the proposed construction on aircraft safety.

The FAA has encouraged the development of zoning laws to provide a safe environment for the critical take off and landing phases of flight at airports. The cooperation and understanding between the FAA and local municipalities is key to limiting the construction of obstacles at or near airports. By providing a mechanism that could disregard local zoning laws, the chances of aircraft collision with the towers and facilities associated with this proposal will surely increase.

Examination of accident records reveals a low number of aircraft collisions with obstacles. On the surface, it would appear that there is no problem associated with towers and the DTV developers proposal would not have a tangible impact on safety. However, the question to ask is, "Why is there such a low number of collisions?" The answer is zoning. The low accident figures demonstrate the effectiveness of municipal ordinances adopted to protect aircraft from obstacles when maneuvering into or out of an airport.

AIRPORT ACCESSIBILITY IMPACT

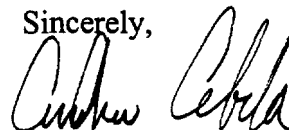
Relocating or new construction of towers near airports can have a devastating impact upon the usefulness and capacity of an airport. Without due consideration of airport concerns, a tower could be placed directly in the approach/departure path of a runway, rendering it unusable.

Pilots use sensitive instrument systems when approaching and departing an airport during unfavorable weather conditions, such as fog, snow, rain or low clouds. Should a tower construction be allowed, for instance, near the instrument approach course to a runway, its usefulness will be severely diminished because the minimum weather conditions for its utilization will increase thereby causing delays during storms where previously the departures could have occurred. Additionally, the angle for the aircraft approach slope may be forced to increase to provide adequate obstruction clearance, creating the necessity for much more rapid descents in the final phases of landing to touch down the aircraft at the proper point on the runway.

CONCLUSIONS

NATA urges the FCC to reexamine the necessity of any rulemaking that will usurp local control over land, as is proposed, and the negative impacts it will have for aviation safety and airport accessibility. The FCC must not overlook the increased collision potential and limitations to airport access that the broadcast facilities could cause, should local zoning requirements be overruled. The current zoning structure has proven itself an effective tool in protecting aircraft and the passengers that they carry when operating in the airspace near airports. NATA contends that the impacted municipalities have the right to determine the proper use of land in their community. The FCC must not undermine the cooperative efforts between the aviation industry and local communities in developing zoning ordinances that protect public safety only to appease the interests of the petitioners.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Cebula", written in a cursive style.

Andrew V. Cebula
Vice President